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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

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COMMISSION

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In the Matter of the Petition of)

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PUGET SOUND ENERGY, INC.,) DOCKET NO. UE-070725

5

) Volume I

For an Order Authorizing the Use) Pages 1 - 34

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of the Proceeds From the Sale of)

Renewable Energy Credits and)

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Carbon Financial Instrument.)

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A prehearing conference in the above matter

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was held on December 1, 2009, at 1:30 p.m., at 1300

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South Evergreen Park Drive Southwest, Olympia,

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Washington, before Administrative Law Judge DENNIS J.

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MOSS.

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The parties were present as follows:

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PUGET SOUND ENERGY, INC., by SHEREE STROM

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CARSON, Attorney at Law, Perkins Coie, 10885 Northeast
Fourth Street, Suite 700, Bellevue, Washington 98004;

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telephone, (425) 635-1422.

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WASHINGTON UTILITIES AND TRANSPORTATION

COMMISSION, by ROBERT D. CEDARBAUM, Assistant Attorney

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General, 1400 South Evergreen Park Drive Southwest,

Post Office Box 40128, Olympia, Washington 98504;

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telephone, (360) 664-1188.

22

PUBLIC COUNSEL, by SARAH A. SHIFLEY,

Assistant Attorney General, 800 Fifth Avenue, Suite

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2000, Seattle, Washington 98104; telephone, (206)

464-6595.

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Kathryn T. Wilson, CCR

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1 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
2 by IRION A. SANGER, Attorney at Law, Davison Van Cleve,
3 333 Southwest Taylor, Suite 400, Portland, Oregon
4 97204; telephone, (503) 241-7242.

5 NORTHWEST ENERGY COALITION, by DAVID S.
6 JOHNSON, Attorney at Law, 811 First Avenue, Suite 305,
7 Seattle, Washington 98104; telephone, (206) 621-0094.

8 RENEWABLE ENERGY PROJECT, by ANN E. GRAVATT
9 (via bridge line), Attorney at Law, 917 Southwest Oak
10 Street, Suite 303, Portland, Oregon 97205; telephone,
11 (503) 223-4544.

12 THE ENERGY PROJECT, by RONALD L. ROSEMAN,
13 Attorney at Law, 2011 14th Avenue East, Seattle,
14 Washington 98112; telephone, (206) 324-8792.

15 FEDERAL EXECUTIVE AGENCIES, by NORMAN J.
16 FURUTA, Attorney at Law, 1455 Market Street, Suite
17 1744, San Francisco, California 94103; telephone,
18 (415) 503-6994.

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1 P R O C E E D I N G S

2 JUDGE MOSS: Good afternoon, everyone. My
3 name is Dennis Moss. I'm an administrative law judge
4 with the Washington Utilities and Transportation
5 Commission. We are convened this afternoon in the
6 matter styled Puget Sound Energy, Inc's amended
7 petition for an order authorizing the use of proceeds
8 from the sale of renewable energy credits and carbon
9 financial instruments, Docket UE-070725. Our concern
10 is actually with an amended petition that was filed
11 fairly recently.

12 Our first order of business today will be to
13 take appearances, and we have the Company, Staff, and
14 Public Counsel present and probably some intervenors
15 who may have petitioned in writing and others who are
16 going to petition orally, I think today, I recognize by
17 counsel. Let's begin with the Company. Ms. Carson?

18 MS. STROM CARSON: Good afternoon, Your
19 Honor. Sheree Strom Carson representing Puget Sound
20 Energy. My address is 10885 Northeast 4th Street,
21 Suite 700, Bellevue, Washington, 98004. Phone is (425)
22 635-1400; fax, (425) 635-2400; e-mail,
23 scarson@perkinscoie.com.

24 JUDGE MOSS: We'll ask for Public Counsel's
25 appearance next.

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1 MS. SHIFLEY: Good afternoon, Your Honor.
2 Sarah Shifley for Public Counsel. My address is 800
3 Fifth Avenue, Suite 2000, Seattle, Washington, 98104.
4 Phone number is (206) 464-6595. My e-mail is
5 sarah.shifley@atg.wa.gov.

6 MR. CEDARBAUM: Thank you, Your Honor.
7 Robert Cedarbaum, assistant attorney general
8 representing Commission staff. My business address is
9 the Heritage Plaza Building, 1400 South Evergreen Park
10 Drive Southwest, Olympia, Washington, 98504. E-mail is
11 bcedarba@utc.wa.gov. The telephone direct dial is area
12 code (360) 664-1188, and the fax is area code (360)
13 586-5522.

14 JUDGE MOSS: We have some intervenors present
15 here in the room.

16 MR. JOHNSON: Thank you, Your Honor. David
17 Johnson representing the Northwest Energy Coalition.
18 The address is 811 First Avenue, Suite 305, Seattle,
19 98104. Phone is (206) 641-0094; fax, (206) 621-0097,
20 and my e-mail address is david@nwenergy.org. Thank
21 you.

22 JUDGE MOSS: We also had an appearance from
23 Ms. Dixon?

24 MR. JOHNSON: Yes. Ms. Dixon could not be
25 here today.

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1 JUDGE MOSS: Thank you. Mr. Sanger?

2 MR. SANGER: My name is Irion Sanger. I'm
3 here representing the Industrial Customers of Northwest
4 Utilities. My address is 333 Southwest Taylor, Suite
5 400, Portland, Oregon, 97204. My phone number is (503)
6 241-7242. My fax is (503) 241-8160, and my e-mail
7 address is ias@dvclaw.com.

8 JUDGE MOSS: Thank you. Mr. Furuta?

9 MR. FURUTA: Good afternoon, Your Honor. My
10 name is Norman Furuta for the Federal Executive
11 Agencies representing their consumer interests. My
12 address is 1455 Market Street, Suite 1744, San
13 Francisco, California, 94103. Telephone is (415)
14 503-6994, and fax is (415) 503-6688, and my e-mail
15 address is norman.furuta@navy.mil.

16 JUDGE MOSS: Thank you, very much.
17 Mr. Roseman?

18 MR. ROSEMAN: Thank you, Your Honor. My name
19 is Ronald Roseman, attorney at law, 2011 14th Avenue
20 East, Seattle, Washington, 98112; telephone, (206)
21 324-8792; fax, (206) 568-0138. My e-mail address is
22 ronaldroseman@comcast.net, and I'm representing The
23 Energy Project.

24 JUDGE MOSS: Thank you, very much. Now, I
25 understand we probably have some people on the

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1 conference bridge line who wish to enter appearances
2 today. I've not heard anything from a representative
3 for Kroger. Is there anyone on the line for Kroger?
4 Apparently not. We did have a written petition to
5 intervene. We will take that up presently.

6 Ms. Gravatt, are you there?

7 MS. GRAVATT: I am, Your Honor.

8 JUDGE MOSS: How about Mr. Amster?

9 MS. GRAVATT: He is not able to join us
10 today.

11 JUDGE MOSS: Why don't you enter an
12 appearance for the Renewable Northwest Project.

13 MR. GRAVATT: I'm Ann Gravatt with the
14 Renewable Northwest Project. Address is 917 Southwest
15 Oak Street, Suite 303 in Portland, Oregon, 97205;
16 phone, (503) 223-4544. Fax is (503) 223-4554; e-mail,
17 ann@rnp.org.

18 JUDGE MOSS: Thank you, and with that, we've
19 had an appearance by, or at least mentioned in one
20 case, all the parties of whom I'm aware. Is there
21 anyone else on the conference bridge line who wishes to
22 enter an appearance today? Anyone else in the room?
23 That apparently does cover it.

24 MR. SANGER: I would like to note for the
25 record that Brad Van Cleve has also put in a notice of

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1 appearance, and I would like to have him put on the
2 service list as well.

3 JUDGE MOSS: I have his name down so I can
4 easily do that. I'll just note for the record, Kroger
5 Company is represented by Mr. Kurtz and Mr. Boehm. I
6 think everybody probably has that contact information.
7 I'll include it, of course, in the prehearing
8 conference order.

9 I have written petitions to intervene from
10 the Industrial Customers of Northwest Utilities, the
11 Northwest Energy Coalition, the Renewable Northwest
12 Project, and Kroger Company. The FEA or The Energy
13 Project, did either of you file a written petition of
14 which I'm unaware?

15 MR. FURUTA: We did not.

16 MR. ROSEMAN: We did not.

17 JUDGE MOSS: I'm taking the written petitions
18 first. Is there any objection.

19 MS. STROM CARSON: Your Honor, the Company
20 has one concern with Kroger's petition to intervene.
21 We don't generally object to Kroger being an intervenor
22 in this case, but the interest that Kroger set forth in
23 their petition and the issues to be raised are not
24 tailored to this particular proceeding and would expand
25 the issues beyond what we would want to see here in

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1 this proceeding, so to that extent, we object to their
2 petition.

3 JUDGE MOSS: I too noticed that their
4 petition seemed to be the product of boilerplate
5 instead of fine focus. To the extent there are rate
6 implications associated with the filing under
7 consideration here, then Kroger would certainly have an
8 interest in that, and I'm sure that is the basis for
9 their intervention, having had them in many cases with
10 PSE before. So with that aside and there being no
11 other objections, I'm going to grant these four written
12 petitions to intervene.

13 The next time you talk to Mr. Kurtz and
14 Mr. Boehm, you can tweak them for their...

15 MS. STROM CARSON: Well, I did e-mail them
16 about it but I never heard back.

17 JUDGE MOSS: Unfortunately, they are not here
18 to defend themselves today. In terms of our other two
19 parties, let's hear from the Federal Executive
20 Agencies.

21 MR. FURUTA: Yes, Your Honor. The main
22 reason I was considering petitioning to intervene is if
23 it develops that this case would have any direct impact
24 on the scheduling and subject matter of the general
25 rate case that is currently before the Commission, if

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1 it develops during the prehearing conference that it
2 will apparently not affect scheduling or other
3 substantive aspects of the general rate case, then I
4 think there will be no need for us to enter a formal
5 appearance, so I think I'll withhold at this time
6 making an oral petition.

7 JUDGE MOSS: We will reserve consideration of
8 that. There will be some discussion of that.
9 Mr. Roseman?

10 MR. ROSEMAN: Thank you, Your Honor. As you
11 mentioned, the petitioner in this case is The Energy
12 Project, which is an organization that has appeared in
13 many of these cases on behalf of low-income customers
14 in the state of Washington. The county petition as
15 filed offers the possibility of some of the proceeds
16 from the REC sale to go to low-income energy efficiency
17 measures; therefore, The Energy Project is in these
18 difficult times for many customers in the state of
19 Washington is especially interested in trying to
20 maximize all the funding that is available to assist
21 these customers, so that is the reason for our oral
22 petition right now.

23 JUDGE MOSS: Thank you very much. Any
24 objection to The Energy Project's participation?
25 Hearing none, and Mr. Roseman has established a

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1 substantial interest in the proceeding on behalf of his
2 clients, so therefore, we will grant the oral petition
3 to intervene by The Energy Project.

4 I'll go ahead and take up matters in the
5 ordinary order, I suppose; although, we will have the
6 additional question in this case of relationship
7 between this or potential relationship between this and
8 the rate case. Will there be discovery required in
9 this case?

10 MR. CEDARBAUM: Yes, Your Honor.

11 JUDGE MOSS: So we will include the standard
12 discovery paragraph in the prehearing order, and that
13 can proceed under the appropriate procedural rules.
14 What about a protective order?

15 MS. STROM CARSON: Yes, Your Honor. We
16 believe a protective order will be needed with highly
17 confidential provisions. We've had discussions with
18 Industrial Customers about possibly modifying the
19 highly confidential protective order that we've used in
20 the rate case to allow additional review of some
21 materials by parties, so we would like to have some
22 more discussions with them and then maybe propose a
23 different highly confidential protective order for this
24 proceeding.

25 JUDGE MOSS: So I'll await hearing something

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1 in terms of that but with the understanding that we
2 will enter a protective order but the parties need some
3 additional time to discuss the terms of the provisions.

4 MR. CEDARBAUM: Before we move on, if we
5 could back up a second. We haven't talked case
6 schedule yet, but depending on what schedule we agree
7 to or get put upon us, it may be that the turnaround
8 time for data requests would need to be accelerated, so
9 I would like to revisit that if necessary.

10 JUDGE MOSS: We do need to discuss the
11 schedule, and I think that part of that conversation is
12 the question of the relationship between this case or
13 potential relationship between this case and the rate
14 case.

15 I did notice in reviewing the response
16 testimony -- we had testimony from Public Counsel's
17 witness, Mr. Norwood, on the issue of renewable energy
18 credits, and apparently, urging some treatment in the
19 rate case, and of course at the same time, we now have
20 this docket pending, and so I would like to hear some
21 discussion from the parties starting with the Company
22 about how we might want to consider that relationship.

23 MS. STROM CARSON: PSE has proposed in the
24 amended petition that there be a credit to customers
25 through an offset against an existing regulatory asset,

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1 so PSE is very interested in having this resolved by
2 the time the order comes out in the rate case so that
3 the compliance filing in the rate case could
4 incorporate whatever the Commission decides in terms of
5 crediting customers.

6 So I guess we don't see this as needing to be
7 joined with the rate case, but we would like to see it
8 on a similar track so it can be resolved. We think the
9 issues here are very limited, and there have been
10 opportunities for discovery in the rate case on a lot
11 of the REC issues, so we aren't starting from scratch
12 here. So PSE is very interested in trying to get this
13 resolved by April.

14 JUDGE MOSS: Is there any reason not to
15 consolidate it with the rate case from PSE's
16 perspective?

17 MS. STROM CARSON: I don't believe so. I
18 think there may be objections from others in terms of
19 timing and getting their testimony done before the
20 hearings in January, but I don't believe there is from
21 PSE's perspective. I should clarify that there is no
22 objection as long as it doesn't delay the rate case
23 schedule.

24 JUDGE MOSS: Public Counsel is recommending
25 through its testimony that there be some sort of a rate

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1 credit associated with the RECs as well via through
2 another mechanism than that proposed by the Company.
3 So I'll turn next to Ms. Shifley and see what Public
4 Counsel thinks about whether we should consider
5 proceeding on the same schedule; as to say,
6 consolidating this with the rate case.

7 MS. SHIFLEY: This amended petition was filed
8 quite a bit after the rate case was filed, and I don't
9 think it would be very feasible at this point to
10 consolidate or treat it on a similar schedule given the
11 time frame for the rate case at this point and where we
12 are with the filing in the rate case; unless, as PSE
13 has indicated, they are not interested in doing the
14 rate case is delayed, the schedule is drawn out to
15 allow discovery.

16 I would just note for the record that Public
17 Counsel did try to do some informal discovery in this
18 docket. After first receiving the amended petition, I
19 think we sent some informal requests for information to
20 the Company in October, and we haven't received any
21 response from that, so we have tried to begin discovery
22 in this case to at least start looking into the issues
23 that this petition raises and have been unable to
24 actually get any information from the Company.

25 So we are starting, even though we have seen

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1 some of these issues in the rate case, we are starting
2 to just look at this docket for the first time now, and
3 we would request that sufficient time be given for
4 discovery and preparation of a response so that the
5 issues in this case can be properly vetted.

6 JUDGE MOSS: Do you expect much in the way of
7 dispute with respect to the facts that pertain to this
8 petition matter? It seems to me it's fairly
9 straightforward.

10 MS. SHIFLEY: I know that our expert witness
11 in this matter did have discovery or did have some need
12 for additional information, which were sent to the
13 Company in these informal requests for information, and
14 I would have to rely on his assessment of the case that
15 at least there is some additional discovery that he
16 would like to have. I don't know the extent of that.

17 JUDGE MOSS: Beyond what's already been
18 submitted?

19 MS. SHIFLEY: Beyond what we've already sent,
20 I don't know. I would have to confer with our witness.

21 JUDGE MOSS: I would like to hear from Staff
22 on this question.

23 MR. CEDARBAUM: Just purely from a scheduling
24 perspective, I think Staff is in a similar position as
25 Public Counsel with respect to putting its response

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1 case on the accounting filing on a track that could
2 then coincide with hearings in the rate case. We have
3 had discussions of scheduling with the Company and even
4 through e-mail copies to all other parties, and from
5 Staff's perspective, we were looking at a filing date
6 in late January and developing a schedule from there
7 that would get briefs to the Commission by the latter
8 part of March, so I don't know if it's out of the
9 question to make the order time for the rate case under
10 that schedule or not, but just purely from a timing
11 perspective, it's not doable, quite frankly, for Staff
12 to file its testimony in the REC proceeding to coincide
13 now with the hearings in the rate case.

14 JUDGE MOSS: The hearings are currently
15 scheduled for the third week in January, I believe, and
16 the suspension date in the case is April 7th?

17 MS. STROM CARSON: Correct.

18 MR. CEDARBAUM: You are right. Hearings in
19 the rate case are January 19 through the 25th, but we
20 have two days of settlement conference on the 5th and
21 6th in January. We have cross-answering testimony on
22 December 17th. We have the holidays. If we could do
23 it sooner, I think Staff would, but it's looking
24 difficult.

25 The second point is looking more from a

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1 policy perspective, I guess. The question has to be
2 asked, is it necessary to consolidate, and from Staff's
3 perspective, it does not seem necessary. The
4 Commission can issue its order in the rate case and
5 order a compliance filing in that case. Rates will
6 change, and the Commission can issue an order in the
7 accounting case and authorize the Company to file
8 tariffs to implement that accounting order and rates
9 will change. Now, they won't change necessarily at the
10 same time, but they will change, and they can change
11 twice. There is nothing legally required in these
12 cases to be consolidated, so I think you have to weigh
13 that against the burden on other parties in terms of
14 scheduling.

15 The final point I would make with respect to
16 your reference to Mr. Norwood's testimony in the rate
17 case, and it's another proceeding so I don't want to
18 get into the details of it, but he has proposed a
19 direct credit in that case of REC revenues. It's
20 Staff's position that those issues should be in the
21 accounting proceeding, and we will address that,
22 Mr. Norwood's testimony, accordingly in the rate case.
23 I'm not sure what that recommendation will be.

24 JUDGE MOSS: But we can anticipate some
25 cross-answering testimony on that subject matter.

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1 MR. CEDARBAUM: I'm not sure it needs to be
2 cross-answering. It could be during the hearings. It
3 could be in briefs. I'm just saying I think that's a
4 rate case issue, but since you mentioned his
5 testimony --

6 JUDGE MOSS: I mentioned it only to
7 underscore the fact that there has been some indication
8 at least that there is a relationship in terms of the
9 subject matter, but without necessarily indicating one
10 way or the other as to what should be considered where
11 or when, that's really what I'm wanting to hear from
12 you all right now so I can decide that, and then I'll
13 ask if anyone else wants to be heard on the question
14 of the relationship between the two proceedings;
15 anybody?

16 MR. SANGER: We have no position on
17 consolidation, Your Honor.

18 MR. JOHNSON: Your Honor, we have no position
19 on consolidation in terms of what schedule is adopted
20 for this proceeding. We did not file response
21 testimony in the general rate case. We may very well
22 file cross-answering testimony due to Mr. Norwood's
23 position, but our concern is less on the issue of how
24 the two cases mesh with each other than it is just the
25 desire, all other things being equal, to get an outcome

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1 on the petition earlier rather than later so that the
2 benefits to the low-income sector as outlined in the
3 petition can flow earlier rather than later. That's
4 the only other issue we want to express today.

5 JUDGE MOSS: Anybody else; Mr. Roseman?

6 MR. ROSEMAN: Mr. Johnson basically addressed
7 part of my concern here. I guess we do not have a
8 specific position about a certain date, but we are
9 extremely concerned about the evergrowing struggle that
10 ratepayers and citizens in this state are having with
11 their financial situation.

12 Assuming, and this is a big assumption, but
13 assuming that the Commission accepts the accounting
14 petition and rules on it, those moneys would allow
15 leveraging of federal and other moneys to assist this
16 population in energy efficiency. Without those moneys,
17 there is the possibility that a fair amount of the
18 federal moneys coming into the state under the stimulus
19 package for energy efficiency would be returned but for
20 a ruling on the accounting petition.

21 So we believe that during the winter heating
22 months that this issue should be resolved as soon as
23 possible. Again, we are not advocating for a specific
24 date or time frame or how it relates to the general
25 rate case, but we are extremely concerned that it be

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1 decided as soon as feasible.

2 JUDGE MOSS: Ms. Gravatt, I will give you an
3 opportunity if you wish to say anything?

4 MS. GRAVATT: Thank you, Judge Moss. At this
5 point, we don't have a position on the consolidation
6 versus not other than to point out we are not a party
7 in the rate case, so I guess but whether we would need
8 to be a late filed intervention involved in (inaudible)
9 -- I was just going to say I believe RNP may not be a
10 party in the rate case, so we would just need some sort
11 of procedural direction on the best way to handle that
12 issue, but otherwise, we have no opinion on the
13 consolidation issues. I will simply reiterate what
14 Mr. Johnson and Mr. Roseman said.

15 JUDGE MOSS: I don't think I'm going to need
16 to give you any procedural guidance because I'm
17 disinclined to consolidate this with the rate case,
18 given what Staff and Public Counsel have said in
19 particular. In terms of their need to prepare the
20 case, it would seem appropriate to put it on its own
21 track. We can leave the question open as we get closer
22 and perhaps things develop more quickly than
23 anticipated.

24 I should mention, however, and I should have
25 mentioned this at the outset, the commissioners do

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1 intend to sit on this petition, so that will expedite
2 the entire decision-making process relative to what
3 would be the case if I were hearing the case on my own,
4 so that is something the parties should be aware of,
5 but it does seem to me that we need to set a separate
6 procedural schedule here, and I'm going to, as usual,
7 give the parties an opportunity to discuss that among
8 themselves, stressing the point that there is
9 necessarily a balance between the parties' needs for
10 time and the need for expedition, so I will have to ask
11 everyone to work cooperatively and come up with a
12 schedule so I'm not required to impose one on you that
13 will make everybody unhappy.

14 So with that, if there is nothing further we
15 need to discuss beforehand, I'll put us in recess for a
16 bit. Apparently not. I'll ask that you include
17 Ms. Gravatt in your discussions, and how much time, 20
18 minutes?

19 MR. CEDARBAUM: Could we say 2:30 unless
20 somebody comes to get you?

21 JUDGE MOSS: We will be in recess until 2:30.

22 (Recess.)

23 JUDGE MOSS: Mr. Cedarbaum said you are going
24 to make me work. Who wants to report?

25 MR. CEDARBAUM: Your Honor, we attempted to

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1 reach a full agreement on a schedule but were unable to
2 with respect to hearing dates and briefing dates, and
3 what I will put on the record is our two alternative
4 schedules that are amenable to Staff. Staff is
5 indifferent to either of these, and other parties will
6 comment on that and maybe present their own schedule,
7 and unfortunately, we would ask the Commission to
8 decide for us.

9 JUDGE MOSS: Okay.

10 MR. CEDARBAUM: The two alternatives that are
11 amenable to Staff, both would have January 28th as the
12 response date for Staff, Public Counsel, and
13 intervenors other than Northwest Energy Coalition,
14 Renewable Northwest Project, and The Energy Project,
15 and would also have February 18th as the rebuttal and
16 cross-answering date.

17 Alternative one hearing dates would be March
18 5th, which is a Friday, just a one-day hearing, with
19 briefs on March 17th, and alternative two would be
20 March 8th and 9th for hearings, recognizing that maybe
21 both days won't be necessary, and then March 23rd, or
22 two weeks after the close of hearing, for briefs,
23 whether that's the 22nd or 23rd, depending on when the
24 hearing gets over. So again, just to repeat, the
25 January 28th and February 18th dates hold for either

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1 alternative. Alternative one hearings are either March
2 5th or March 8th and 9th, and briefs are either March
3 17th or March 23rd.

4 I apologize to the parties. I didn't mention
5 this while we were off the record, but with respect to
6 the February 18th date for rebuttal, the Company along
7 with The Energy Coalition, Renewable Northwest Project,
8 and The Energy Project filed joint testimony, so we
9 would assume that there would be joint rebuttal at most
10 from those same parties and not individual rebuttal
11 from each of those parties. As a practical matter,
12 perhaps that wouldn't end up mattering, but it doesn't
13 seem appropriate or fair that there should be four
14 separate rebuttal cases filed that day.

15 MR. JOHNSON: As I recall the testimony, the
16 joint testimony focused on one aspect but not all of
17 the parameters of the amended petition. Mr. DeBoer
18 submitted separate testimony for the Company dealing
19 with issues such as the regulatory offset and that sort
20 of thing, so there is somewhat of a divergence of
21 positions, and I could imagine the three intervenors
22 submitting consolidated testimony on their particular
23 issue, but I don't think that that issue is going to
24 cover all of the issues that will be dealt with when it
25 comes time to file rebuttal. The Company will have its

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1 own position on issues that Mr. DeBoer discussed.

2 MR. CEDARBAUM: That's a fair point. I'm
3 sorry, Your Honor. I was just trying to avoid with
4 being faced with four separate rebuttal cases, but what
5 Mr. Johnson just said makes sense as well.

6 JUDGE MOSS: Anybody else want to be heard?

7 MR. ROSEMAN: Yes, Your Honor. I guess
8 somewhat on the same line with what Mr. Johnson said,
9 the response testimony covers areas outside of the
10 joint testimony that it seems to us that we should not
11 be lumped together as a group to try to respond to an
12 issue that only maybe one party is interested in or we
13 have different points of view on that.

14 I guess this is another take of what
15 Mr. Johnson's point is, but my recommendation would be
16 that we be allowed, if warranted and need be, to file
17 our own cross-answering testimony if necessary.

18 JUDGE MOSS: Anybody else want to be heard?

19 MS. SHIFLEY: Your Honor, Public Counsel
20 would just offer a third alternative, which I believe
21 the hearing dates have already been confirmed by Staff
22 with the Commission and the Commission is available on
23 these dates. The third alternative that Public Counsel
24 would ask for would be response on January 28th,
25 rebuttal on February 23rd, hearings scheduled for March

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1 16th and 17th with the understanding that they could be
2 shortened to one day if it appears that it's feasible,
3 and briefs due after the hearings, and to accommodate
4 some possible conflicts from ICNU, we would ask for the
5 briefs to be due April 6th or 7th.

6 And I'll just point out that the amended
7 petition was filed by the Company and the intervenors
8 late in the game and they didn't ask for consolidation
9 with the rate case, and these issues have been around,
10 so as far as the timing of when this was filed and
11 brought to Public Counsel's attention, this is
12 something that we would only have been able to begin
13 looking at at the time the amended petition was filed,
14 and we have tried informally to start discovery to try
15 to find out if there are going to be extensive issues,
16 and we don't know at this point because we haven't
17 gotten answers to some of those questions.

18 We do understand that there is discovery that
19 is taking place in the rate case already that deals
20 somewhat with RECs, but there are definitely unique
21 issues in this docket that we are still trying to
22 figure out how complex they are going to be. We just
23 don't know at this point, so it seems more appropriate
24 to air on the side of caution to give time to fully
25 consider what might be precedential issues in this

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1 case.

2 MS. STROM CARSON: Your Honor, the Company is
3 agreeable to either the first or second alternative
4 that Staff proposed. Our preference would be the first
5 alternative, which would have briefs completed by the
6 17th of March. Our goal is to have this decided as
7 soon as possible. The petition was originally filed in
8 2007. The amended petition was filed in early October
9 of 2009, so we still would have a six-month time period
10 for this case.

11 There has been extensive discovery on REC
12 issues in the rate case, so we think Staff's first
13 proposal is a schedule that works for everyone except
14 Public Counsel.

15 MR. SANGER: Your Honor, we have attorney
16 unavailability issues in the last couple weeks of March
17 which has posed a bit of a problem. The first schedule
18 that Staff has suggested is a schedule we think we can
19 make work. It would require us to get our brief done
20 early, but I think we can make that work.

21 The schedule proposed by Public Counsel, we
22 could possibly make that work. The second schedule, we
23 would need to change our current plans to make that
24 work. Having the hearing on the 8th and 9th and having
25 the brief on the 23rd would not give us sufficient time

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1 to prepare our brief in that amount of time, so we
2 would ask that you not adopt the second schedule.

3 JUDGE MOSS: I guess that leaves me a little
4 bit confused. You can do a hearing on March 5th and
5 have your brief ready by the 17th, but you can't do a
6 hearing on the 8th and have your brief ready by the
7 22nd; is that what you are telling me?

8 MR. SANGER: I believe so, Your Honor. We
9 would like to have our brief due the week of the 8th.
10 We would have our brief done by the end of that week or
11 that weekend, but I think if we had the hearing on the
12 8th and 9th, that would be insufficient time for us to
13 be able to draft our brief without changing our plans
14 that we have.

15 JUDGE MOSS: You mean in other matters?

16 MR. SANGER: Yes. If the hearing isn't going
17 to be over until the 9th, we will have to change our
18 other plans and other schedules in order to get the
19 brief done.

20 MR. ROSEMAN: Your Honor, The Energy Project
21 would be satisfied with either one of Staff's
22 proposals.

23 JUDGE MOSS: Mr. Cedarbaum, did you do any
24 further checking on hearing dates?

25 MR. CEDARBAUM: I did ask Nancy Mullen about

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1 March 5th, and that was available.

2 JUDGE MOSS: Well, there is some possibility
3 of course that the hearing will require more than one
4 day. I sort of hesitate to schedule a hearing on a
5 Friday, and certainly I would want to back that up on
6 the 8th. Considering everything I've heard, I think I
7 will go ahead and set that.

8 Let's see, if we do the March 5th hearing,
9 the proposal of everybody but Public Counsel is to have
10 the response testimony on the 28th of January and the
11 rebuttal on February 18th, right, and cross-answering,
12 and then hearing could be on March 5th.

13 MR. CEDARBAUM: Perhaps we could set aside
14 the 8th as a safety backup date without changing the
15 briefing date.

16 JUDGE MOSS: And then briefs would be due on
17 the 17th?

18 MR. JOHNSON: I just wanted to mention the
19 Coalition's position. The schedule you are discussing
20 right now is acceptable to the Coalition with just one
21 caveat. Ms. Dixon, who will likely be the Coalition's
22 witness, she normally is unavailable due to child care
23 issues on Fridays and Mondays and Wednesdays, for that
24 matter. Tuesdays and Thursdays are the days she is
25 available, but she has testified many times before via

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1 the bridge line, and it would be a heads-up to you and
2 the parties that she would likely do so if we did have
3 the hearings on the 5th and the 8th.

4 JUDGE MOSS: We will be able to work that
5 out, I'm sure. Witness availability is something we
6 are able to accommodate.

7 MR. JOHNSON: Thank you.

8 JUDGE MOSS: I think based on everything I've
9 heard here, I will go ahead and set March 5th. That's
10 going to work better for me too looking at my schedule.
11 I'm presiding in the PSE rate case as well, and given
12 the date of reply briefs in that case is March 2nd, I'm
13 going to be pretty busy in this time frame with that,
14 so if we could have this hearing a little earlier, that
15 would be better for me, and I face a suspension date in
16 that proceeding, so I have to be sensitive to the
17 Commission's need for time, and we do prefer to have 30
18 days to work on these decisions and orders in these
19 major rate cases. I notice from the response testimony
20 there seems to be quite a few issues now.

21 So we will go ahead and set the 5th, and I'm
22 going to set the 8th as a backup date with the briefing
23 on the 17th, and Ms. Shifley, I'm sensitive to your
24 concerns. If problems develop in terms of getting
25 responses to discovery or something like that, you can

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1 bring those to my attention. Procedural schedules are
2 subject to change for a good cause, or by agreement of
3 the parties, of course, so I want to encourage the
4 Company in that regard to try to respond promptly. I
5 don't know how much informal discovery is pending out
6 there, but if you could get answers to Public Counsel
7 promptly, that would be helpful to them, I'm sure, but
8 I don't think this schedule is overly ambitious.

9 So we will set January 28th as the date for
10 response testimony for parties that are not aligned
11 with the Company in terms of its petition; February
12 18th for rebuttal and cross-answering testimony, which
13 will include an opportunity as appropriate for parties
14 to put on such case they believe they need to put on.
15 I do want to, consistent with the conversation we've
16 had though, encourage those of you who are aligned on
17 this, to file jointly to the extent that's feasible,
18 but I understand, Mr. Roseman. Your point is well
19 taken. There may be some things that come up in
20 response that would prompt one or more of you.

21 Mr. Furuta, we don't want to forget about
22 you. It does not appear to me that you are going to
23 need to intervene in this, given what you said earlier.

24 MR. FURUTA: That's correct, Your Honor.

25 JUDGE MOSS: You will be able to protect your

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1 interests in the rate case to the extent these issues
2 are implicated there.

3 MR. FURUTA: Yes.

4 JUDGE MOSS: Do we need to resolve anything
5 else today?

6 MR. SANGER: Yes, Your Honor. Mr. Cedarbaum
7 raised the issue of data response times, and I have not
8 looked at the calendar, but given our due ends of
9 January, now we may want to look at shortening response
10 times.

11 JUDGE MOSS: We often do that. Does anybody
12 have any concern about shortening response times?

13 MR. CEDARBAUM: Certainly after the February
14 18th filing date, but then the Company will say after
15 the January 28th filing date.

16 It would be Staff's proposal that the data
17 request response time be reduced to five business days
18 upon the filing of rebuttal and cross-answering on
19 February 18th.

20 JUDGE MOSS: Mr. Cedarbaum is anticipating
21 the Company will counter with a proposal and it be
22 shortened after the January 28th responsive filing
23 time, but that may or may not be the case. Ms. Carson?

24 MS. STROM CARSON: That would be the case; we
25 would ask for that. I think that's reasonable. It's a

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1 pretty short time period between response filing and
2 rebuttal, and so we would ask that that be shortened at
3 that time to five days.

4 I guess one other issue I would like to raise
5 in terms of outstanding discovery, one reason
6 outstanding informal requests for information haven't
7 been responded to is we do need a protective order
8 issued in this case, and we are going to work on that,
9 but that does need to be issued before these responses
10 go out under this docket.

11 JUDGE MOSS: What I would ask that you all do
12 to expedite things -- I don't know if we have ever had
13 this procedure with PSE before or not, but we could go
14 ahead and have the parties execute the standard
15 confidentiality agreement under the standard form of
16 protective order considering that there will be an
17 order in place, which is something of a formal
18 commitment on the part of the parties to give
19 appropriate protections.

20 If that's agreeable to everyone, we can go
21 ahead and get that process started. Public Counsel,
22 for example, could go in and file anything they need to
23 file and get that process rolling, and then you all get
24 back to me within a few days or whatever it takes as
25 you try to modify or attempt to work out some modifying

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1 language for the highly confidential. I don't want to
2 issue two orders.

3 MS. STROM CARSON: That's agreeable to the
4 Company. We have done that before.

5 JUDGE MOSS: So we will do that. You all
6 have copies of the standard confidentiality agreement.
7 If you need a copy of it, contact Ms. Walker in our
8 shop and she will send you one and get that process
9 rolling, and I'll order the shortened response time
10 after the 28th.

11 MS. SHIFLEY: Your Honor, I don't know if
12 this is something we need to handle here, but as far as
13 setting up an electronic service list and providing
14 names, should we follow up with you?

15 JUDGE MOSS: We've been following this
16 procedure for a few cases. If you all let me know in
17 the next two days any additional contacts you want to
18 have on the electronic service list, I'll include that.
19 I'll postpone the prehearing conference order until
20 later in the week and include all that information. We
21 are now following as a standard procedure the
22 electronic submission on the stated dates in the
23 procedural schedule followed by the hard copy the next
24 day.

25 My recollection is that if you are seeking

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1 service only by electronic means that you still need to
2 file a brief letter with the Commission saying that you
3 waive the paper service. So if any of you want to
4 proceed in that way, please file something with the
5 Commission stating that you waive paper service.

6 Anything else?

7 All right. Let's see, I did check on copies.
8 We need original plus ten copies in this proceeding.
9 Hopefully that won't go up. If you are filing material
10 that includes confidential information, the ten copies
11 should be of the unredacted version, and then we need
12 one copy each of the confidential version redacted, or
13 highly confidential as appropriate redacted.

14 No need to remind you all of the Commission's
15 filing requirement for the records center. As we get
16 closer to the hearing, I'll follow my usual practice of
17 establishing a deadline for the exchange of
18 cross-examination exhibits and that sort of thing.

19 MR. SANGER: There is one additional thing
20 that we have not discussed about the schedule, and
21 that's the possibility of a issue discussion or
22 settlement conference.

23 JUDGE MOSS: Thank you. That is something we
24 do need to include as part of our standard prehearing
25 order. We do like to identify a date for parties to

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1 talk settlement. Did you all have a date in mind or
2 anybody want to propose one?

3 MR. SANGER: I would propose that it be after
4 the date for which Staff and Intervenors file their
5 testimony on January 28th, but besides that, I don't
6 have any specific proposal.

7 MR. CEDARBAUM: We didn't discuss anything
8 specifically.

9 JUDGE MOSS: How about something during the
10 week of February 8th or February 15th?

11 MR. CEDARBAUM: I would prefer the 8th just
12 because it's farther away from the opening briefs in
13 the rate case.

14 MR. JOHNSON: The 15th is also a holiday.

15 JUDGE MOSS: Eight is a very nice number.
16 Let's make it February the 8th. You might all want to
17 change that. You are free to change that. Just make
18 sure everybody is informed, and keep me apprised of any
19 positive developments in that regard, and we will
20 adjust the procedural schedule or do whatever we need
21 to do if that becomes evident we should do that.

22 Anything else? Thank you all for being here
23 today. I know that you all will let me know if there
24 are any problems along the way. We will be in recess.

25